

Before the
Federal Communications Commission
Washington, D.C.

In the matter of)	
)	
Rules and Regulations Implementing the)	
Telephone Consumer Protection Act of 1991)	CG Docket Number 02-278
)	
Petition for Expedited Declaratory Ruling of)	
NorthStar Alarm Services, LLC)	

COMMENTS

John A. Shaw
374 Cromwell Drive
Rochester, NY 14610
john@jashaw.com

March 15, 2019

INTRODUCTION AND SUMMARY

This comment is in response to the Petition for Expedited Declaratory Ruling filed by NorthStar Alarm Services, LLC¹, which I oppose, and the resulting Public Notice seeking public comment on the petition.²

At issue is whether the Telephone Consumer Protection Act of 1991 (“TCPA”)³ applies to “calls using recorded audio clips specifically selected and presented by a human operator in real-time, a tool generally referred to as ‘soundboard technology’”.⁴

I comment as a telephone consumer only. I am not employed by or otherwise connected with any business or organization that makes telephone calls to consumers or with any business or organization involved with soundboard or any other product used for telephone calls.

ARGUMENT

The statutory text does not preclude coverage of soundboard technology.

The relevant portion of the TCPA is:

(b) Restrictions on use of automated telephone equipment

(1) Prohibitions

It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States-

...

(B) to initiate any telephone call to any residential telephone line *using an artificial or prerecorded voice* to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes, is made solely pursuant to the collection of a debt owed to or guaranteed by the United States, or is exempted by rule or order by the Commission under paragraph (2)(B);⁵

The TCPA does not provide any exception for audio clips, “soundboard technology”, or individual words or phrases. It is prerecorded voices that are prohibited by the statute.

¹ Petition for Expedited Declaratory Ruling filed by NorthStar Alarm Services, LLC (NorthStar) filed Jan. 2, 2018, (Petition) (accessible at <https://ecfsapi.fcc.gov/file/10103290733918/NorthStar%20FCC%20Petition.pdf>).

² *Consumer and Governmental Affairs Bureau seeks comment on petition for expedited declaratory ruling by NorthStar Alarm Services, LLC*, DA 19-74 (February 12, 2019).

³ 47 U.S.C. § 227, P.L. 102-243, 105 STAT 2394.

⁴ *Petition* at 1.

⁵ 47 U.S.C. § 227(b)(1)(B) (*emphasis added*).

Likewise, the TCPA does not provide any exception for call in which a person does more than initiating the call. The statute does not imply any exemption for a call in which a human continues to be involved in the call.

The TCPA does not state or imply that the message must be a uniform, singular message. Even if a message is made from individually recorded clips and a different message is delivered to each recipient, it is still a message.

The legislative history does not preclude coverage of soundboard technology

There may not have been soundboard technology when the TCPA was passed, but it could have been reasonably anticipated that it would be possible to play individual sound clips as a part of a telephone call. But Congress did not include any provision in the TCPA that would allow for an exception for such technology.

The section on findings in the original Congressional act⁶ does not list any finding that would not apply to the use of soundboard technology. One of these findings is:

Evidence compiled by the Congress indicates that residential telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy.⁷

Congress has amended the TCPA several times since soundboard technology began to be used in telemarketing. They had ample opportunity to include an amendment to allow this technology but did not.

Public policy does not support permitting calls using soundboard technology.

It is true that the use of soundboard technology provides numerous benefits to the industry. However, the purpose of the TCPA is to protect telephone consumers, not to benefit telemarketers.

⁶ P.L. 102-243, 105 STAT 2394, §2

⁷ *Id.* at §2(10)

Every purported advantage of the use of soundboard technology is also found when scripts are read by the caller. Not mentioned is that the use of prerecorded snippets allows calls to be outsourced to foreign countries and callers who speak with a difficult to understand accent. When the recipient of such a call interrupts the recorded message, he then must speak to someone who may be difficult to understand.

There are other means available to reduce the burden of lawsuits.

According to the petition NorthStar is the defendant in a class action suit regarding violations of the TCPA using soundboard technology.⁸ NorthStar and other telemarketers could avoid this kind of lawsuit by not using any prerecorded message for their marketing. Alternatively, they could use soundboard technology whenever they have express permission to do so.

CONCLUSION

Soundboard technology uses prerecorded voice in direct violation of the clear and unambiguous text of the TCPA. I urge the Commission to deny the petition by NorthStar and to consider calls using recorded clips or soundboard technology to be covered by the TCPA.

Prompt denial of this petition will assist the courts in addressing the central legal action and will establish a national standard for courts to consider when confronted with this issue.

Respectfully submitted,

/s/John A. Shaw

⁸ *Petition* at 6.